

MF 02-3

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-0000
v.)	Acct # 00-00000
)	NTL # 00-000000 0
JOHN DOE)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Jim Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, appearing *pro se*.

Synopsis:

The Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The taxpayer timely protested the NTL, and a hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On June 6, 2001, the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license. (Dept. Ex. #1).

2. On July 20, 2001, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1000 for failure to have a valid license while operating the vehicle on June 6, 2001. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

"[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds ***, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds ***, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. ***" (35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a

valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayer explained that he operates a small business in Missouri and was not aware of the laws in Illinois concerning licensing of trucks. He admitted that at the time that he drove his truck into Illinois, his vehicle had a registered gross vehicle weight of 30,000 pounds, which triggers the license requirement. He stated that he realizes now that he should have acquired the license before driving his vehicle in Illinois, but the harsh penalty has been overwhelming.

Unfortunately for the taxpayer, the circumstances of this case do not permit waiving the penalty. There is no provision in the statute that allows the penalty to be abated based on the taxpayer's failure to know the licensing requirements. Although the

taxpayer's honesty is commendable, he was not in compliance with the law on the day in question. It must therefore be recommended that the Notice of Tax Liability be affirmed.

Linda Olivero
Administrative Law Judge

Enter: March 14, 2002